

Exhibit E

Excerpts of May 16, 2019 Hearing Transcript

1 UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

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3 IN RE: THE FINANCIAL OVERSIGHT PROMESA
& MANAGEMENT BOARD FOR PUERTO
4 RICO, TITLE III

5 as representative of 17 BK 3283 (LTS)
6 THE COMMONWEALTH OF
PUERTO RICO, et al. (Jointly Administered)

7 Debtors.
8

9 -----x

Motion Hearing
May 16, 2019
2:00 p.m.

10
11 Before:

12 HON. LAURA TAYLOR SWAIN,

13 District Judge
14

15 APPEARANCES

16 PROSKAUER ROSE LLP
17 Attorneys for Financial Oversight and Management Board
BY: BRIAN C. ROSEN

18 PAUL HASTINGS LLP
19 Attorneys for Official Committee of Unsecured Creditors
and its capacity as Commonwealth agent
20 BY: LUC A. DESPINS
G. ALEXANDER BONGARTZ

21 O'MELVENY & MYERS LLP
22 Attorneys for AAFAF
BY: PETER FRIEDMAN

23 BUTLER SNOW LLP
24 Attorneys for Financial Guaranty Insurance Company
BY: MARTIN A. SOSLAND
25

1 conflict comes up.

2 THE COURT: I will ask this at the simplest, most
3 naive level. You are not proposing to challenge bonds of one
4 of these other creditors; you are challenging liens of HTA or
5 ERS in a complaint that concludes with "and if there is no
6 lien, therefore the money belongs to the Commonwealth"?

7 MR. DESPINS: Not in these complaints. It has been
8 our position on the clawback that if the Court rules or is
9 prepared to rule that they are secured in HTA, our position is
10 that at that point we are allowed to argue, because the secured
11 creditors of HTA would get nothing, that the Commonwealth
12 defeats their interest because they are not a secured creditor
13 of the Commonwealth. But not in these complaints. That's the
14 short answer.

15 THE COURT: Not in these complaints?

16 MR. DESPINS: Absolutely not.

17 The point on ERS, your Honor, is that the employees
18 that are subject to the collective bargaining agreement with
19 SEIU, these are current employees. That is very important.
20 The Retiree Committee represents retired employees. The
21 committee represents active employees with respect to their
22 retirement benefits.

23 There are tons of these people. These are janitors in
24 schools and all that are represented by SEIU that have put
25 millions of dollars of their own money pursuant to a law that

1 was adopted in 2000 where they were forced to fund their own
2 pension. They put that money in ERS.

3 That money is gone. This is not the same thing as
4 having an entitlement to a pension. This was their own money
5 they were putting in. That money is gone. These employees are
6 still employees because this happened in 2000. They haven't
7 retired yet. They are current employees and they are
8 represented by SEIU.

9 THE COURT: As to the argument that SEIU would not
10 have standing to file a proof of claim for the individual
11 underlying employee and therefore can't be a creditor in that
12 sense for 926 purposes, your response is?

13 MR. DESPINS: It's exactly that. If you look at the
14 Altair Airline case cited in our reply, it is the only circuit
15 decision that addresses this. What happened there was people
16 like monolines came in and said a union cannot be on the
17 Committee, they are not a creditor. The Third Circuit said
18 absolutely they can be on the Committee as a creditor. That is
19 the only circuit decision that I know that has addressed the
20 issue.

21 It is very important to point out the bar date order.
22 Pension claims were exempted from filing, and therefore the
23 fact that there was no claim filed at ERS is of no moment
24 because these are pension claims. They are expressly excluded
25 from the bar date, your Honor.

1 I would conclude with the Retiree Committee. That is
2 the point you made. They lobbied heavily with the Oversight
3 Board to replace the Committee, and that did not bear fruit. I
4 don't know how it's possible for them to be substituted at this
5 point given that the board does not desire that.

6 I think that addresses all the points, your Honor.

7 THE COURT: Thank you. We will take a five-minute
8 break. Actually, we will take a ten-minute break. Let's
9 everyone be back in their seats by 3:10 by the clock on the
10 wall. Thank you.

11 (Recess)

12 THE COURT: I will now make my ruling as to the motion
13 on the record.

14 Pending before the Court is the movants' urgent joint
15 motion for entry of order approving stipulation and agreed
16 order by and among the *Financial Oversight and Management*
17 *Board, its Special Claims Committee, and Official Committee of*
18 *Unsecured Creditors Related to Joint Prosecution of Certain*
19 *causes of action of Puerto Rico Highways and Transportation*
20 *Authority and Employees Retirement System of the Government of*
21 *the Commonwealth of Puerto Rico.* (Docket entry number 6867 in
22 case 17-3283). I will refer to this as "the motion."

23 The Court has considered carefully the motion and the
24 terms of the proposed stipulation as well as the objections
25 filed by several parties in interest and the arguments made in

1 court today. For the reasons that follow, the objections are
2 overruled and the motion is granted.

3 At the April 24, 2019 omnibus hearing, the Court
4 approved a similar stipulation with respect to the Commonwealth
5 that is filed as docket entry number 6524, and the Court
6 articulated its reasoning for doing so on the record.

7 In summary, the Court previously determined that it
8 has the authority to approve the consensual grant of derivative
9 standing. The Court further determined that the Oversight
10 Board's decision to share its responsibility to pursue causes
11 of action in light of the so-called Aurelius risk constitutes
12 the necessary refusal for purposes of section 926(a) of the
13 Bankruptcy Code.

14 The Court hereby adopts and incorporates by reference
15 its earlier reasoning regarding consensual derivative standing
16 and section 926 of the code as reflected in the transcript of
17 the Court's oral opinion on the Commonwealth stipulation motion
18 at the April 24, 2019 hearing.

19 The Court finds that movants have established that
20 both necessity and debtor benefit support the grant of
21 authority to the Unsecured Creditors Committee and members of
22 the Oversight Board's Special Claims Committee to pursue causes
23 of action for the benefit of HTA and ERS in accordance with the
24 terms of the proposed stipulation.

25 The Court finds for substantially the reasons set

1 forth in the relevant portion of the movants' reply brief that
2 SEIU has the requisite creditor status under section 926 of the
3 code by virtue of its members' claims against ERS.

4 In the context of the HTA and ERS Title III cases, the
5 relevant statutes of limitation expire on May 20, 2019,
6 pursuant to bankruptcy code sections 108(a) and 546(a). The
7 litigation contemplated by the stipulation must be commenced
8 within the next few days.

9 Additionally, although the President of the United
10 States has indicated that he intends to renominate the current
11 members of the Oversight Board to continue serving in such
12 capacities, he has not yet acted on his intention to do so, and
13 the First Circuit's stay of its mandate is set to expire on
14 July 15, 2019. Therefore, despite the arguments made by the
15 objectors, the future status of the Oversight Board remains in
16 question and the movants are still in a situation where the
17 Oversight Board's authority to prosecute the actions may expire
18 or be interrupted soon after the May 20, 2019 deadline.

19 In the face of such uncertainty, it would be imprudent
20 for the Court to deny the requested relief. Accordingly, the
21 Court finds that the framework contemplated by the proposed
22 stipulation is both necessary and beneficial to HTA and ERS.

23 The Court is satisfied that the Committee is the
24 proper party to be appointed as co-plaintiff and co-trustee in
25 these cases at this juncture. It is the only official

1 committee that has been appointed in both the HTA and ERS
2 cases.

3 Moreover, the Court finds the argument that there are
4 relevant conflicts of interest on the part of the Committee
5 unpersuasive. As made clear in the pleadings, the stipulation
6 seeks to pursue claims against third parties, not interdebtor
7 claims. Interdebtor claims are subject to the
8 intergovernmental tolling stipulation approved by the Court on
9 May 2, 2019, and filed at docket entry number 6812.

10 There is no factual basis in the record for the
11 objectors' assertion that the Committee's role and positions
12 taken as official committee in the Commonwealth case on the one
13 hand and the HTA and ERS cases on the other impede the ability
14 or willingness of the Committee to vigorously pursue claims
15 against nondebtors on behalf of HTA and ERS to recover monies
16 or protect rights of those debtors, that is, HTA and ERS.

17 The fact that a pending motion exists that challenges
18 this authority of the Committee in the ERS case does not change
19 this analysis. Unless and until the Court determines
20 otherwise, the Committee is a valid statutory entity in both
21 the ERS and HTA cases. Moreover, it is the only entity with
22 which the Oversight Board has agreed to share its
23 responsibility to pursue causes of action.

24 In the event the Court subsequently decides to disband
25 the Committee in the ERS case and in light of the any other

1 actions affecting the Oversight Board's status that may have
2 been taken by that time, the Oversight Board will need to
3 evaluate the circumstances and determine whether it deems it
4 necessary to seek to replace the Committee with another party
5 plaintiff or request other relief from the Court to address the
6 so-called Aurelius risk.

7 For the foregoing reasons, the objections are
8 overruled and the motion is granted. Movants are directed to
9 submit a Word version of the stipulation to Chambers. The
10 Court will thereafter enter an appropriate order approving the
11 stipulation.

12 This concludes our proceeding today. Is there
13 anything else that we need to discuss together? I thank the
14 Court staff in New York and Puerto Rico for their unfailing
15 excellence and support. The next scheduled hearing is the June
16 12th Omnibus Hearing in San Juan. We are adjourned. Keep well
17 everyone.

18 (Adjourned)

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1 UNITED STATES DISTRICT COURT)
) ss.
2 OF PUERTO RICO)
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4 REPORTER'S CERTIFICATE

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6 I, Thomas W. Murray, do hereby certify that the above
7 and foregoing pages, consisting of the preceding 80 pages
8 constitutes a true and accurate transcript of our stenographic
9 notes and is a full, true, and complete transcript of the
10 proceedings to the best of our ability.

11 Dated this 18th day of April, 2019.

12 S/Thomas W. Murray _____

13 Thomas W. Murray

14 Official Court Reporters
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